

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

FILED

MAY 18 2005

U.S. DISTRICT COURT
DISTRICT OF RHODE ISLAND

JAMIE J. CORES

v.

C.A. No. 05-077T

JO ANNE B. BARNHART,
Commissioner of Social Security

REPORT AND RECOMMENDATION

Lincoln D. Almond, United States Magistrate Judge

Before the Court is the Commissioner of Social Security's (the "Commissioner") Motion for Entry of an Order and Judgment Dismissing the Action (Document No. 7). Defendant seeks dismissal of the case asserting that all of Plaintiff's attorney's fees and all Social Security disability insurance benefits ("DIB") to which he is entitled have been paid. Plaintiff has not filed any opposition to the Commissioner's Motion. This matter has been referred to me for preliminary review, findings, and recommended disposition pursuant to 28 U.S.C. § 636(b)(1)(B) and D.R.I. Local R. 32(c). The Court has determined that no hearing is necessary. After reviewing the Memorandum submitted by the Defendant and performing independent research, I recommend that the Motion for Entry of an Order and Judgment Dismissing this Action be GRANTED.

Facts

In 2001, Plaintiff applied for DIB for himself and his two children. His claim was denied both initially and upon reconsideration. After a hearing, however, Plaintiff was found to be disabled and thus entitled to benefits based on a decision issued in November of 2003. Plaintiff signed an agreement with an attorney to represent him for a contingent fee of up to 20% of past due benefits

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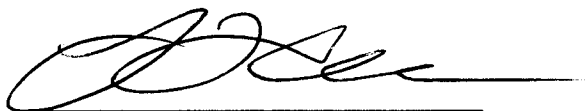
to which he or his dependents might be entitled. Initially, there was a problem determining the amount properly payable to Plaintiff's attorney. As a result, the Commissioner represents that \$6,552.00 was withheld from Plaintiff's past due benefits and \$1,354.00 from the past due benefits of each of his children, pending a determination of the amount actually owed to the attorney.

On February 22, 2005, Plaintiff filed a *pro se* Complaint asserting that the Social Security Office had overpaid his attorney and that he was entitled to the overpayment. Plaintiff's Complaint, however, specifies neither the amount overpaid, nor the amount he is owed. In response, Defendant filed the Motion for Entry of an Order and Judgment Dismissing the Action on April 15, 2005. The Motion specifies that Plaintiff's attorney was owed \$5,300.00 and that this amount (less a servicing fee) has now been sent to the attorney. The Commissioner represents that the remainder of the Plaintiff's past-due benefit, \$1,252.00 (\$6,552.00 - \$5,300.00) was sent to Plaintiff's representative payee during the last week in February and was credited to Plaintiff's bank account shortly after he filed his Complaint. In addition, she represents that the amounts previously withheld from Plaintiff's children's benefits (\$1,354.00) were sent to their respective payee(s) at the same time.

In short, it appears that Plaintiff's Complaint is now moot. The Commissioner represents that all amounts owed to Plaintiff's attorney, Plaintiff and his children, have been paid. It appears that this was done shortly after the filing of Plaintiff's Complaint. Plaintiff has not filed any opposition disputing the Commissioner's representations, and thus this Court believes those representations should be accepted as true and accurate. As such, there is no live controversy to be decided by the Court, and Defendant's Motion for Entry of an Order and Judgment Dismissing the Action should be GRANTED.

Conclusion

For the foregoing reasons, I recommend that Defendant's Motion for Entry of an Order and Judgment Dismissing the Action (Document No. 7) be GRANTED. Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of the Court within ten (10) days of its receipt. See Fed. R. Civ. P. 72(b); D.R.I. Local R. 32. Failure to file specific objections in a timely manner constitutes waiver of the right to review by the District Court and the right to appeal the District Court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).



LINCOLN D. ALMOND
United States Magistrate Judge
May 12, 2005

The recommendation is
hereby accepted.



Ernest C. Torres
Chief, US District Judge

Date: 5/31/05